

Department of Energy

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any) on those documents, and DOE responses to those comments, as part of its consideration of the proposal (40 CFR 1505.1(d)) and shall include such documents, comments, and responses as part of the administrative record (40 CFR 1505.1(c)).

(d) If an EIS or EA is prepared for a DOE proposal, DOE shall consider the alternatives analyzed in that EIS or EA before rendering a decision on that proposal; the decision on the proposal shall be within the range of alternatives analyzed in the EA or EIS (40 CFR 1505.1(e)).

(e) When DOE uses a broad decision (such as one on a policy or program) as a basis for a subsequent narrower decision (such as one on a project or other site-specific proposal), DOE may use tiering (40 CFR 1502.20) and incorporation of material by reference (40 CFR 1502.21) in the NEPA review for the subsequent narrower proposal.

§ 1021.211 Interim actions: Limitations on actions during the NEPA process.

While DOE is preparing an EIS that is required under § 1021.300(a) of this part, DOE shall take no action concerning the proposal that is the subject of the EIS before issuing an ROD, except as provided at 40 CFR 1506.1. Actions that are covered by, or are a part of, a DOE proposal for which an EIS is being prepared shall not be categorically excluded under subpart D of these regulations unless they qualify as interim actions under 40 CFR 1506.1.

§ 1021.212 Research, development, demonstration, and testing.

(a) This section applies to the adoption and application of programs that involve research, development, demonstration, and testing for new technologies (40 CFR 1502.4(c)(3)). Adoption of such programs might also lead to commercialization or other broad-scale implementation by DOE or another entity.

(b) For any proposed program described in paragraph (a) of this section, DOE shall begin its NEPA review (if otherwise required by this part) as soon as environmental effects can be meaningfully evaluated, and before DOE has reached the level of invest-

ment or commitment likely to determine subsequent development or restrict later alternatives, as discussed at 40 CFR 1502.4(c)(3).

(c) For subsequent phases of development and application, DOE shall prepare one or more additional NEPA documents (if otherwise required by this part).

§ 1021.213 Rulemaking.

(a) This section applies to regulations promulgated by DOE.

(b) DOE shall begin its NEPA review of a proposed rule (if otherwise required by this part) while drafting the proposed regulation, and as soon as environmental effects can be meaningfully evaluated.

(c) DOE shall include any relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments, as part of the administrative record (40 CFR 1505.1(c)).

(d) If an EIS is required, DOE will normally publish the draft EIS at the time it publishes the proposed rule (40 CFR 1502.5(d)). DOE will normally combine any public hearings required for a proposed rule with the public hearings required on the draft EIS under § 1021.313 of this part. The draft EIS need not accompany notices of inquiry or advance notices of proposed rulemaking that DOE may use to gather information during early stages of regulation development. When engaged in rulemaking for the purpose of protecting the public health and safety, DOE may issue the final rule simultaneously with publication of the EPA Notice of Availability of the final EIS in accordance with 40 CFR 1506.10(b).

(e) If an EA is required, DOE will normally complete the EA and issue any related FONSI prior to or simultaneously with issuance of the proposed rule; however, if the EA leads to preparation of an EIS, the provisions of paragraph (d) of this section shall apply.

§ 1021.214 Adjudicatory proceedings.

(a) This section applies to DOE proposed actions that involve DOE adjudicatory proceedings, excluding judicial or administrative civil or criminal enforcement actions.

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(b) DOE shall complete its NEPA review (if otherwise required by this part) before rendering any final adjudicatory decision. If an EIS is required, the final EIS will normally be completed at the time of or before final staff recommendation, in accordance with 40 CFR 1502.5(c).

(c) DOE shall include any relevant NEPA documents, public and agency comments (if any) on those documents, and DOE responses to those comments, as part of the administrative record (40 CFR 1505.1(c)).

§ 1021.215 Applicant process.

(a) This section applies to actions that involve application to DOE for a permit, license, exemption or allocation, or other similar actions, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part.

(b) The applicant shall:

(1) Consult with DOE as early as possible in the planning process to obtain guidance with respect to the appropriate level and scope of any studies or environmental information that DOE may require to be submitted as part of, or in support of, the application;

(2) Conduct studies that DOE deems necessary and appropriate to determine the environmental impacts of the proposed action;

(3) Consult with appropriate Federal, state, regional and local agencies, American Indian tribes and other potentially interested parties during the preliminary planning stages of the proposed action to identify environmental factors and permitting requirements;

(4) Notify DOE as early as possible of other Federal, state, regional, local or American Indian tribal actions required for project completion to allow DOE to coordinate the Federal environmental review, and fulfill the requirements of 40 CFR 1506.2 regarding elimination of duplication with state and local procedures, as appropriate;

(5) Notify DOE of private entities and organizations interested in the proposed undertaking, in order that DOE can consult, as appropriate, with these parties in accordance with 40 CFR 1501.2(d)(2); and

(6) Notify DOE if, before DOE completes the environmental review, the

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applicant plans to take an action that is within DOE's jurisdiction that may have an adverse environmental impact or limit the choice of alternatives. If DOE determines that the action would have an adverse environmental impact or would limit the choice of reasonable alternatives under 40 CFR 1506.1(a), DOE will promptly notify the applicant that DOE will take appropriate action to ensure that the objectives and procedures of NEPA are achieved in accordance with 40 CFR 1506.1(b).

(c) For major categories of DOE actions involving a large number of applicants, DOE may prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide.

(d) DOE shall begin its NEPA review (if otherwise required by this part) as soon as possible after receiving an application described in paragraph (a) of this section, and shall independently evaluate and verify the accuracy of information received from an applicant in accordance with 40 CFR 1506.5(a). At DOE's option, an applicant may prepare an EA in accordance with 40 CFR 1506.5(b). If an EIS is prepared, the EIS shall be prepared by DOE or by a contractor that is selected by DOE and that may be funded by the applicant, in accordance with 40 CFR 1506.5(c). The contractor shall provide a disclosure statement in accordance with 40 CFR 1506.5(c), as discussed in § 1021.312(b)(4) of this part. DOE shall complete any NEPA documents (or evaluation of any EA prepared by the applicant) before rendering a final decision on the application and shall consider the NEPA document in reaching its decision, as provided in § 1021.210 of this part.

§ 1021.216 Procurement, financial assistance, and joint ventures.

(a) This section applies to DOE competitive and limited-source procurements, to awards of financial assistance by a competitive process, and to joint ventures entered into as a result of competitive solicitations, unless the action is categorically excluded from preparation of an EA or EIS under subpart D of this part. Paragraphs (b), (c), and (i) of this section apply as well to DOE sole-source procurements of sites,